THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.2826 OF 2006

DATED: 20.02.2006

BETWEEN:

Hamed Bin Esa

.....Petitioner

and

The Commissioner, Municipal Corporation of Hyderabad

... Respondent

THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.2826 OF 2006

ORDER:

The petitioner claims that there is certain oral gift made in his favour on 01.08.1988 in respect of 1000 sq. yard situated at Bagh-e-Jahan Ara, Yakutpura, Hyderabad and since then he has been in possession and enjoyment of the same. While so, some third parties started trespassing and raising illegal constructions and therefore, the petitioner filed a representation before the Municipal Corporation of Hyderabad on 30.12.2005 and also got issued a legal notice.

A plain reading of the entire writ affidavit does not disclose any cause of action to entertain the writ petition.

In these circumstances, it is better to extract the entire affidavit, which reads as follows:

1. That I am the petitioner herein hence well acquainted with the facts of the case.

2. That originally a piece of land under Sy.No.136, 137, 138-A (New T.S.No.4, Ward 205, Block D),Admn.3 acres 38 guntas, situated at Bagh Chanchalam now called as Bagh e Jaha Ara, Yakutpura, Hyderabad, was the property of Smt Wahedunnisa Begum who was the paternal grand mother of Sri Ahmed Hussain Khan. The said Smt Wahedunnisa Begum was the pattedar of the said land. After the death of Wahedunnisa Begum a succession enquiry was conducted by the then Deputy Tahsildar, Hyderabad West. A public notice was also issued on the application of Sri Ahmed Hussain Khan to get declared himself as the sole heir of Wahedunnisa Begum. As no objection was received from any corner the succession enquiry was completed and Sri Ahmed Hussain Khan was declared as the sole successor of Smt Wahedunnisa Begum.

3. Accordingly on 15.8.1964 succession certificate was issued in the name of Ahmed Husain Khan after due enquiry and after issuing notices to the concerned parties and general public as stated above. Consequently the name of the Ahmed Husain Khan was recorded as the successor of Smt Wahedunnisa Begumand patta was mutated in his name in the revenue records.

4. That Sri Ahmed Hussain Khan thus being the absolute owner and possessor of the above said land orally gifted a portion of it admn. 1000 sq. yards in my favour on 1.8.1988 by making declaration in presence of several persons, which was accepted by me and possession of the said land was also delivered to me. The said land is bounded by:

North: House No.17.8.454

South: Do

East : 20 feet wide road

West; House No. 17.8.454

Since then I am in enjoyment of the possession of the same. After the oral gift the said Ahmed Hussain Khan has also executed a memorandum of gift on 5.12.04 in my favour to enable me to effect mutation of the said land in his

favour. After becoming the owner, I have also constructed a room with tin shed.

5. On the said plot of land when some trespassers started raising illegal construction by raising foundation, I immediately lodged a complaint against the illegal construction in the office of the respondent herein on 30.12.2005 and obtained acknowledgment.

6. I have also brought it to the notice of the respondent that the trespassers did not obtain any permit of construction. After filing the complaint I approached the respondent and his subordinates from pillar to pot on several occasions, requesting them to take immediate action on my complaint but none of the officers of the MCH paid any heed to my requests.

7. I respectfully submit that the respondent and his subordinates who are public servants and part and parcel of statutory body are bound to uphold the majesty of law by way of taking prompt action against the violators of law. They cannot keep the complaint of a citizen under their thighs and thus allow the law violators to laugh at the rule of law.

8. The respondent ought to have issued notices to the person concerned whose names I have mentioned in my complaint under section 461, 452 and 636 of MCH Act.

9. Failure on the part of the respondent to take action in accordance with law amounts to abuse of the process of law and dereliction of their duties for which they are answerable to this Hon'ble Court.

10. Because of the lethargic attitude of the respondent and his subordinates the law violators have become bold enough and they are proceedings with the construction work day in and day out. As such they activities are necessary to be contained.

11. I submit that I have no alternative remedy other than approaching this Hon'ble High Court under Article 226 of the Constitution of India.

12. I submit that I have not filed any other writ, suit or any other proceedings for the relief prayed for in this writ petition.

13. A sum of Rs.100/- is paid towards court fees.

14. Hence it is prayed.

That this Hon'ble Court may be pleased to pass an order, direction or a writ particularly in the nature of Writ of Mandamus declaring that the respondent and his subordinates are legally bound to take action whenever a complaint against the illegal construction is given to them, under the provisions of MCH Act particularly under section 461, 452 and 636 of MCH Act. Consequently this Hon'ble Court maybe pleased to direct the respondent to take necessary action on the complaint made by the petitioner, dated 24.1.2006 and 30.12.2005 and pas any other order or order a deemed fit and proper under the circumstances of the case in the interest of justice."

In view of the aforesaid averments, I am of the opinion that without impleading the so-called trespassers against whom the petitioner has got grievance and claims and certain other reliefs, this writ petition cannot be admitted. W.P. is devoid of any merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

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V.ESWARAIAH,J

Dated:20-02-2006

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